



THE ATTORNEY GENERAL OF TEXAS

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November 7, 1972

Hon. Bill Lofland
County Attorney
Rockwall County
P. O. Box 36
Rockwall, Texas 75087

Opinion No. M-1260

Re: Whether the Commissioners Court of Rockwall County may call an election for voters of the county to determine whether to separate the office of sheriff, tax assessor and collector into two separate and different offices, and related questions.

Dear Mr. Lofland:

Your request for an opinion asks the following questions:

"1. Can the Commissioners Court of Rockwall County, Texas call an election for the voters of Rockwall County to determine whether or not they desire to separate the office of Sheriff, Tax Assessor and Collector into two different offices?

"2. If an election is called for this November 7, 1972, as it is my understanding that the local commissioners court has already voted to do and on that date the voters vote favorably to create the new office, does the Commissioners Court have the authority to appoint an Assessor-Collector of Taxes for Rockwall County, Texas to begin January 1, 1973."

Section 16 of Article VIII of the Constitution of Texas provides:

"The Sheriff of each county, in addition to his other duties, shall be the Assessor and Collector of Taxes therefor; but in counties having 10,000 or more inhabitants to be determined by the last preceding census of the United States, an Assessor and Collector of

Taxes shall be elected as provided in Section 14 of this Article, and shall hold office for four years and until his successor shall be elected and qualified."

Under the above quoted provisions the sheriff performs ex-officio the duties of the assessor and collector of taxes. Nelson v. Edwards, 55 Tex. 389 (1881); Brooks v. Dulaney, 100 Tex. 86, 93 S.W. 997 (1906).

Section 16a of Article VIII of the Constitution of Texas provides:

"In any county having a population of less than ten thousand (10,000) inhabitants, as determined by the last preceding census of the United States, the Commissioners Court may submit to the qualified property taxpaying voters of such county at an election the question of adding an Assessor-Collector of Taxes to the list of authorized county officials. If a majority of such voters voting in such election shall approve of adding an Assessor-Collector of Taxes to such list, then such official shall be elected at the next General Election for such Constitutional term of office as is provided for other Tax Assessor-Collectors in this State."

In construing the provisions of Section 16a it was held in Attorney General's Opinion WW-1292 (1962):

"Sec. 16a, Art. 8, Texas Constitution, is self-executing, and requires no enabling act by the Legislature for the voters of a county to take action under its provisions. This section provides no specified time to call the election, so any such election held under the provisions of this section may be called at any time, in any year, at the discretion of the Commissioners Court. The term of the present sheriff and tax assessor-collector will expire on December 31, 1964, or as soon thereafter as his successor shall have qualified. There will be a General Election held in November, 1962 and a General Election in November, 1964. If the Constitution had

meant for the present sheriff and tax assessor-collector to serve out his full term, before anyone assumed the office of tax assessor-collector, it could have provided, '. . . then such official shall be elected at the next General Election immediately preceding the expiration of the term of office of sheriff and tax assessor-collector.' But the Constitution says, '. . . at the next General Election . . . ' In our situation this means the General Election to be held in November, 1962."

Since Rockwall County has a population of less than 10,000 inhabitants, according to the last preceding federal census, the Commissioners Court of Rockwall County may call an election and submit the question of adding an assessor-collector of taxes to the list of authorized county officials. This election will not affect the term of office of the office of sheriff. If an affirmative vote is cast it will create the additional office of assessor-collector of taxes.

Article 7246-1/2, Vernon's Civil Statutes, provides:

"Where the separate office of assessor-collector of taxes is added to the list of authorized county offices in a county having less than 10,000 inhabitants by an election pursuant to Article VIII, Section 16a, of the Texas Constitution, the commissioners court in its discretion may fill the office by appointment until an assessor-collector is elected at the next general election and qualifies for the office as required by law. Before entering upon the duties of the office, the appointee shall take the official oath and shall give bond in the manner prescribed by law for other assessor-collectors."

The provisions of Section 16a of Article VIII of the Constitution of Texas specifically provide that if a majority of the voters approve of adding an assessor-collector of taxes to the list of authorized county officials, then such officials shall be elected at the next general election. Article 7246-1/2 authorizes the commissioners court to fill the office of assessor-collector of taxes created by the election by an appointment until the next general election.

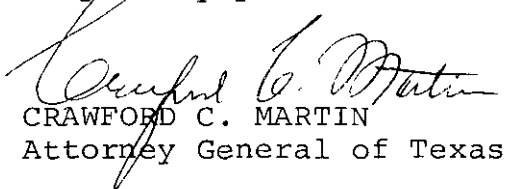
Therefore it is our opinion that no conflict exists between the provisions of Section 16a of Article VIII of the Constitution of Texas and Article 7246-1/2, Vernon's Civil Statutes. Furthermore, as pointed out above, the term of office of sheriff is not affected by the creation of the additional office of assessor-collector of taxes.

You are accordingly advised that the provisions of Article 7246-1/2 are constitutional and the commissioners court will have the authority to appoint an assessor-collector of taxes until the next general election if the office of assessor-collector of taxes is created by an affirmative vote at the election called pursuant to Section 16a of Article VIII of the Constitution of Texas.

S U M M A R Y

The commissioners court in a county having a population of less than 10,000 inhabitants has the authority to submit the question of adding an assessor-collector of taxes to the list of authorized county officials. If such office is created the commissioners court has the authority to fill the office by appointment until the next general election following the creation of the office. Texas Constitution, Article VIII, Section 16a; Article 7246-1/2, Vernon's Civil Statutes.

Very truly yours,


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Prepared by John Reeves
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APPROVED:
OPINION COMMITTEE

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